



Virginia
Regulatory
Town Hall

Periodic Review and Notice of Intended Regulatory Action Agency Background Document

Agency Name:	Agriculture and Consumer Services
VAC Chapter Number:	2 VAC 5-500
Regulation Title:	Rules and Regulations Governing Cooling, Storing, Sampling and Transporting of Milk or Milk Samples from the Farm to the Processing Plant or Laboratory
Action Title:	Amend
Date:	December 6, 2000

This information is required pursuant to the Administrative Process Act § 9-6.14:25, Executive Order Twenty-Five (98), and Executive Order Fifty-Eight (99) which outline procedures for periodic review of regulations of agencies within the executive branch. Each existing regulation is to be reviewed at least once every three years and measured against the specific public health, safety, and welfare goals assigned by agencies during the promulgation process.

This form should be used where the agency is planning to amend or repeal an existing regulation and is required to be submitted to the Registrar of Regulations as a Notice of Intended Regulatory Action (NOIRA) pursuant to the Administrative Process Act § 9-6.14:7.1 (B).

Summary

Please provide a brief summary of the regulation. There is no need to state each provision; instead give a general description of the regulation and alert the reader to its subject matter and intent.

A regulation that establishes: (1) the requirements to obtain a permit to weigh and sample milk or to operate a milk hauling business; (2) milk cooling and storage temperature requirements as well as minimum construction and installation requirements for equipment and facilities used to cool, store, or transport milk; and (3) uniform procedures which must be used by permitted milk haulers for collection of milk samples.

Basis

Please identify the state and/or federal source of legal authority for the regulation. The discussion of this authority should include a description of its scope and the extent to which the authority is mandatory or discretionary. Where applicable, explain where the regulation exceeds the minimum requirements of the state and/or federal mandate.

Sections 3.1-530.1, 3.1-530.2, 3.1-535, and 3.1-535.1 of the Code of Virginia (1950), as amended, provide the statutory authority for the regulation. These sections do not require the Board of Agriculture and Consumer Services to adopt regulations governing the cooling, storing, sampling or transporting of milk or milk samples.

Public Comment

Please summarize all public comment received as the result of the Notice of Periodic Review published in the Virginia Register and provide the agency response. Where applicable, describe critical issues or particular areas of concern in the regulation. Also please indicate if an informal advisory group was or will be formed for purposes of assisting in the periodic review or development of a proposal.

The Department published its notice in The Virginia Register of Regulations on September 11, 2000, advertising the opportunity to comment on this regulation pursuant to Executive Order Number Twenty-five (98). An informal advisory group was not formed for the purpose of assisting with this periodic review.

The Department received no comments relative to this regulation.

Effectiveness

Please provide a description of the specific and measurable goals of the regulation. Detail the effectiveness of the regulation in achieving such goals and the specific reasons the agency has determined that the regulation is essential to protect the health, safety or welfare of citizens. In addition, please indicate whether the regulation is clearly written and easily understandable by the individuals and entities affected.

The regulation is effective in achieving its specific and measurable goals.

The first specific goal of the regulation is to ensure the safety and quality of milk produced in Virginia by establishing temperatures at which milk must be kept on the farm and in the dairy plant, and by establishing equipment-design, construction, installation, and use requirements which protect milk from contamination during storage, transfer, and delivery.

Proper cooling enhances the quality and safety of milk and proper equipment prevents product contamination. However, from a practical point of view, it is not feasible to determine the exact number of incidents of improperly cooled milk or incidents of contamination that have been prevented by the system established through the regulation. By controlling the growth of organisms in milk during storage and transport, the regulation ensures the efficacy of pasteurization. The effectiveness of pasteurization decreases as the number of organisms in raw milk increases.

A second specific goal of the regulation is to establish standards to be used in collecting and evaluating milk samples. Milk is sampled for purposes of determining (i) its components (such as fats, solids, and protein)--the basis for determining how much the farmer is to be paid for his milk; and (ii) its suitability (determined by the amount of bacteria it contains, among other things) for consumption by humans.

Measuring success in attaining this specific goal is indirectly possible by determining that persons involved in the weighing, sampling, and transfer of milk are tested, permitted, and evaluated as required by the regulation.

The regulation is clearly written and easily understood by the individuals and entities affected.

Alternatives

Please describe the specific alternatives for achieving the purpose of the existing regulation that have been considered as a part of the periodic review process. This description should include an explanation of why such alternatives were rejected and this regulation reflects the least burdensome alternative available for achieving the purpose of the regulation.

During the course of this review, the agency considered three alternatives.

The first alternative considered was not to have this regulation, but the agency rejects this alternative because the regulation ensures the efficacy of pasteurization. Also, this alternative would not comply with recommended standards of the United States Department of Health, Education and Welfare or the United States Department of Agriculture. Failure to comply with these recommended standards would effectively bar the sale of milk outside of Virginia.

A second alternative considered was to institute a third-party certification program which would perform the necessary testing, inspection, and evaluation functions currently provided by agency personnel. Third-party certification refers to a system in which a person, organization, or party, separate from either the dairy industry or the agency, would perform necessary testing, inspection, and evaluation services.

Holders of permits, dairy farmers, milk-marketing cooperatives, and dairy plant processors would be charged a fee for services rendered through third-party certification. The agency would have to continue to issue and renew all permits in order to take regulatory actions against permit holders. This alternative would transfer the majority of the cost of inspection, testing, and

certification to industry while freeing agency resources for use in other program areas. This alternative was rejected for the following reasons: (i) the transfer of costs to industry from a program entirely funded through general funds would be an additional tax on the dairy industry; (ii) the dairy industry would likely pay much more in user fees than the agency currently spends to operate the program; (iii) the agency would have to create and operate a program to supervise and certify the third-party group, reducing the anticipated savings to the agency; and (iv) legal concerns involving the chain of custody for milk samples and the ability to defend regulatory actions in administrative or court proceedings would be more complicated and cumbersome, further reducing any savings to the agency.

The third alternative considered was to keep the regulation in its current form and continue to provide the required services through the agency. This alternative was selected for the following reasons:

1. The agency can operate the program more efficiently than other alternatives considered;
2. Confidence in the quality of milk samples used to determine the value of milk is enhanced by vesting the responsibility for the program with the Commonwealth; and
3. This alternative provides for a more uniform administration over the program statewide, since it is administered through just one office, which has control of all aspects of the program.

Recommendation

Please state whether the agency is recommending the regulation be amended or terminated and the reasons such a recommendation is being made.

The agency recommends that the regulations be amended for the following reasons:

The regulation should include the milk of goats, sheep, water buffalo, and other species of mammals if the milk or dairy products are intended for human consumption. The primary purpose of the regulation is to ensure the safety and quality of milk produced on Virginia dairy farms. Safety and quality of milk are ensured by requiring milk to be refrigerated and handled in ways which protect the milk from contamination. The regulation should also be consistent with the requirements of the Pasteurized Milk Ordinance (PMO) for Grade "A" milk which include milk from cows, goats, and sheep. The PMO is a model federal regulation which governs the regulation of Grade "A" milk and milk products nationwide.

The regulations should be amended to include provisions for the cooling, storing, and sampling of milk without the use of a bulk tank. The small-scale production of goat's milk, sheep's milk, water buffalo milk, or the milk from other mammals intended for human consumption is not suitable for refrigerated bulk milk tanks. Bulk milk tanks typically require fifty or more gallons of milk to operate properly. Small-scale producers of goat's milk, sheep's milk, or water buffalo milk seldom produce more than a few gallons of milk per milking, making the use of bulk tanks

unfeasible. To foster the developing small-scale dairy industry in Virginia, alternatives to bulk tanks need to be included in the regulation.

The regulation should be amended to eliminate references to fees. Fees used to be charged for milk hauling permits but the authority for them was eliminated by the General Assembly in 1996.

The regulation should be amended to require permits for each milk pickup tank or milk transport tank used to move milk in Virginia. The PMO was amended by the May 1999 Interstate Milk Shippers Conference to require permits for milk haulers, persons who weigh and sample milk, milk pickup tanks, and milk transport tanks. Compliance with the provisions of the PMO is essential to maintain Interstate Milk Shipper ratings. An Interstate Milk Shipper rating of ninety or better is required to ship Grade "A" milk and milk products out of state. Once every two years each Grade "A" milk supply and dairy processor is rated for compliance with the requirements of the PMO. Failure to achieve a satisfactory score of ninety or better prevents receiving states from accepting any milk from the affected milk supply. The only options available to dairy farmers whose supply of milk fails an Interstate Milk Shipper rating is to market their milk production for manufacturing purposes at substantially reduced prices or dump it on the farm.

The regulation should be amended to include recording thermometer specifications which are consistent with the PMO. The May 1999 Interstate Milk Shipper's Conference modified the PMO to include requirements for recording thermometers to be installed on Grade "A" farm bulk milk tanks with specific design and installation requirements. The regulation should be consistent with the PMO.

The regulation should be amended to require dedicated milk transport tanks to be used to haul any pasteurized milk, milk products, or frozen desserts mix, when the products will not be re-pasteurized at the plant where they are packaged. The primary focus for the regulation is to ensure milk safety. Contaminated milk transport tanks are believed to have caused a large public health outbreak associated with the consumption of ice cream in 1994. That year a company received pasteurized ice cream mix in milk transport tanks which were also used to haul raw eggs from an egg cracking plant. The transport tanks were not properly washed and sanitized after hauling the raw eggs, and salmonella was introduced into the ice cream mix that was being transported. Re-pasteurization of the mix in the plant prior to packaging or use of dedicated tankers would have avoided this serious public health outbreak. This outbreak caused illness in more than two thousand people nationwide.

The regulation should be amended to require the collection of two identical milk samples at each pickup. Currently, a great deal of Virginia's milk is marketed out of state, making the collection of milk samples for compliance with PMO requirements difficult. If milk haulers were required to collect two identical samples from each dairy farm on their milk pickup route, agency personnel could collect one set of milk samples before the load leaves Virginia and the other set of milk samples could accompany the load to its final destination. This would save time and travel costs for inspectors that currently travel to individual dairy farms to procure milk samples needed for compliance with the PMO.

The regulation needs to be re-written in the active voice.

Substance of Proposed Action

Please detail any changes that would be implemented.

Persons milking goats, sheep, water buffalo, or other mammals whose milk is intended for human consumption would fall under the regulation for the first time. These individuals would be required to comply with the cooling and storage requirements for milk contained in the regulation. Persons milking goats, sheep, water buffalo, or other mammals whose milk is intended for human consumption are currently regulated under the Virginia Food Laws and related regulations, which require cooling and storing of food products at or below 45 degrees F or at or above 140 degrees F.

Currently, contract milk haulers are required to obtain one permit and to number and identify each pickup or transport tank as prescribed by the agency. To comply with the PMO, the agency proposes to require contract milk haulers to obtain permits for each milk pickup and transport tank they operate. There is no fee required to obtain a permit.

Family Impact Statement

Please provide a preliminary analysis of the proposed regulatory action that assesses the potential impact on the institution of the family and family stability including the extent to which the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.

Unless otherwise discussed in this report, this regulation has no impact upon families.